

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Emma Kaisla	Team: Squad #15	CCRB Case #: 202006433	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 09/22/2020 4:55 PM	Location of Incident: § 87(2)(b) [REDACTED]	Precinct: 28	18 Mo. SOL 3/22/2022	EO SOL 5/4/2022	
Date/Time CV Reported Tue, 09/22/2020 5:56 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 09/22/2020 5:56 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Felix Paulino	07858	962002	028 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Christophe Tarricone	03487	962127	028 PCT
2. PO Matthew Morales	07110	957873	HWY 01
3. PO Ajdina Musovic	26990	965362	028 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Felix Paulino	Force: Police Officer Felix Paulino used physical force against § 87(2)(b) [REDACTED]	[REDACTED]

Case Summary

On September 22, 2020, § 87(2)(b) filed this complaint with the CCRB via the online complaint form.

On September 22, 2020 various officers responded to a vehicle accident at § 87(2)(b). They arrested § 87(2)(b) for driving while intoxicated. Prior to taking him to the stationhouse for processing, PO Ajdina Musovic transported § 87(2)(b) to Mt. Sinai § 87(2)(b) Hospital and was joined by PO Christopher Tarricone and PO Felix Paulino, all of the 28th PCT. PO Matthew Morales of Highway Unit 1 also responded to the hospital. While in the emergency department, § 87(2)(b) requested to use the restroom multiple times. Eventually, PO Paulino held a portable hospital urinal for the handcuffed § 87(2)(b) so he could relieve himself. While § 87(2)(b) used the urinal, some urine spilled outside the urinal. § 87(2)(b) a nurse in the emergency department, and her colleague § 87(2)(b) observed PO Paulino punch § 87(2)(b) in the stomach (**Allegation A: Force**, § 87(2)(g)).

There is no BWC from this incident as the incident's location, within a patient care area of a hospital, prohibited the use of BWC as per the Patrol Guide. There was no security footage because the hospital did not have any security cameras in the area where the incident occurred.

Findings and Recommendations

Allegation (A) Force: Police Officer Felix Paulino used physical force against § 87(2)(b).

§ 87(2)(b) provided an initial statement in her website complaint on September 22, 2020 and a sworn statement on November 6, 2020 (Board Reviews 01-02). She also provided a statement to IAB (Board Review 04-05). § 87(2)(b) did not give a statement to the CCRB but provided one to IAB (Board Review 06-07). § 87(2)(b) an emergency department technician, gave a statement on January 8, 2020 (Board Review 03). Despite conducting CTS, CLEAR, Lexis, and BADS database searches, checking with the Department of Homeless Services, and conducting fieldwork to a recent address of § 87(2)(b)s, the investigation was unable to contact him. However, while in custody on September 22, 2020 § 87(2)(b) did make allegations regarding the incident that are captured on PO Paulino's BWC (Board Review 08). Dr. § 87(2)(b) who treated § 87(2)(b) declined to speak to the investigation.

None of the medical staff who gave statements provided § 87(2)(b)s name due to HIPAA privacy rules. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) Although none of the staff referred to him by name, he is referred to throughout the discussion of civilian testimony as § 87(2)(b). Based on BWC, police documentation, and consistent police and civilian testimony the investigation identified the four officers present in the emergency department as PO Paulino, PO Tarricone, PO Musovic, and PO Morales.

It is undisputed that § 87(2)(b) was in the first bed from the door on the right in Cardiac 1, a room where hospital staff place patients who are intoxicated or at risk of falling to be monitored. He was handcuffed by one arm to the bed. While § 87(2)(b) waited with officers in the emergency room, he requested to use the restroom multiple times before PO Paulino helped him to use a hospital urinal, a small container with a handle that allows one to relieve themselves without leaving a hospital bed. While PO Paulino assisted him with the hospital urinal, PO Tarricone was nearby within Cardiac 1, PO Musovic was in the vicinity near the doorway of Cardiac 1, and PO Morales stood

outside in the hallway. While § 87(2)(b) used the urinal some urine spilled, and PO Paulino made contact with § 87(2)(b)'s stomach with his hand. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) testified that she was walking past Cardiac 1, her coworker, § 87(2)(b) was walking past in the opposite direction. While walking past Cardiac 1, § 87(2)(b) observed through the doorway PO Paulino standing over a male patient who was leaning over the foot of a bed. § 87(2)(b) was about ten feet away from them. There was a puddle of urine on the floor of the room. PO Paulino was standing on the patient's right and was leaning over the patient's right shoulder. The patient's feet were both on the ground, his left arm was handcuffed to the bed, and he was hunched over. He seemed to be bracing for a punch. PO Paulino landed at least three but possibly more forceful punches on the patient's abdomen using his right hand. He did not use any other kind of force.

§ 87(2)(b) consulted with her colleague § 87(2)(b) and the two decided § 87(2)(b) would confront the officers over what they had seen. They returned to Cardiac 1 together, by which point PO Tarricone and PO Musovic had entered Cardiac 1. § 87(2)(b) sat quietly on the bed and did not say anything. § 87(2)(b) approached PO Paulino and told him he should not do that, it was not right, and that especially in this current political climate he should keep his calm. § 87(2)(b) stood with § 87(2)(b) but did not herself speak to the officers or the patient. In response to § 87(2)(b) PO Paulino said something to the effect that it would not happen again. PO Musovic stated that because the patient only had one hand cuffed to the bed, it was a justified use of force. PO Tarricone said that maybe he should not have done that, and it would not have happened. § 87(2)(b) took this to mean that the patient should not have peed on the floor to avoid being punched. The puddle of urine was still on the floor. In her first statement § 87(2)(b) stated that when she observed § 87(2)(b) being punched, he was not being belligerent. While she heard from her colleagues that § 87(2)(b) had not been combative or belligerent, she was not treating § 87(2)(b) herself and did not directly observe his demeanor prior to the moment when she observed PO Paulino punching § 87(2)(b).

In her statement to IAB, § 87(2)(b) stated that as she was walking to assess the patient prior to discharge, she saw PO Paulino punch the patient in the stomach one time. § 87(2)(b) did not witness anything prior to this and was not sure what provoked the punch. After witnessing this, § 87(2)(b) went into the room and spoke to PO Paulino, expressing that she was upset. She asked § 87(2)(b) if he was okay and he said he just wanted to go. PO Paulino said he was upset that urine had spilled floor and § 87(2)(b) got the impression that was what provoked the incident. § 87(2)(b) who provided care to § 87(2)(b) and assessed him herself, did not provide any information about § 87(2)(b)'s demeanor in her statement to IAB.

§ 87(2)(b) an emergency department technician, stated that § 87(2)(b) was slightly drunk but not to the point of stumbling or slurring. Cardiac 1 was very busy and contained many intoxicated patients that were being monitored. § 87(2)(b) was on the opposite side of the room from § 87(2)(b)'s bed, about 4 to 5 steps away. Her view of the patient and the officers was partially obstructed by a drawn privacy curtain. § 87(2)(b) was sitting and had one hand and one foot cuffed to the hospital bed. Because he had been drinking, the patient repeatedly needed to use the restroom. To allow him to go to the bathroom, officers needed to uncuff him each time. The first few times the officers brought the civilian to the restroom, § 87(2)(b) observed them go. Eventually the officers told him they would not bring him to the bathroom and that he had to use the hospital urinal. § 87(2)(b) could not see because of the curtain, but from listening to the conversation she believed that one officers was holding the urinal for the patient and some urine spilled. From her angle much of the scene was obstructed by the curtain, § 87(2)(b)

saw one officer holding the patient near his abdominal area and one officer positioned above him. The patient grunted as if he was in pain. § 87(2)(b) was not able to see anything more. While this occurred, only two male officers were behind the curtain. It was loud in Cardiac 1 and the other patients were yelling; the other patients were “riled up” by what happened to § 87(2)(b).

Although the investigation was unable to reach § 87(2)(b) in PO Paulino’s second BWC, filmed at the stationhouse after the hospital, § 87(2)(b) sits in a cell and states to an unidentified officer “the officer punched me in the ribs, my ribs are so sore” (Board Review 08). He then states he does not want to go to the hospital as he wants to see the judge, but he wanted to let the officer know. He then states “I asked to use the bathroom in the hospital, he punched me so hard because I had to use the bathroom” He then points to PO Paulino, holding the BWC, and states “he punched me, hard. I think he broke his hand, and my ribs is broken though.” PO Paulino and the other officer repeatedly ask if he wants medical attention. § 87(2)(b) declines.

§ 87(2)(g)
§ 87(2)(b) was discharged early in the time spent at the hospital, but hospital staff needed to print out discharge paperwork before officers could leave with § 87(2)(b). The officers waited about an hour to ultimately receive the discharge paperwork. With the exception of PO Morales who did not directly interact with him, the officers described § 87(2)(b) as agitated and belligerent. PO Paulino, PO Tarricone, and PO Musovic also all testified that they initially wanted § 87(2)(b) to wait to use the restroom until they arrived at the stationhouse because they thought him using the hospital restroom was a safety issue due to its proximity to the hospital exit, its distance from § 87(2)(b)’s current location, and because they did not want to uncuff him if it was not medically necessary. § 87(2)(b) received a hospital urinal which PO Paulino helped him use.

PO Paulino testified that though handcuffed to the bed by one arm, § 87(2)(b) was moving around between lying down and sitting on the bed. PO Paulino did not recall if § 87(2)(b) was interacting with other patients specifically. § 87(2)(b) was highly intoxicated; PO Paulino believed he was intoxicated because he was highly talkative and had bloodshot eyes. He did not recall if there was anything else that made him believe he was intoxicated. He was “belligerent” to PO Paulino and other people in the room by yelling and screaming. He was saying disrespectful things, but PO Paulino did not recall exactly what he was saying. PO Paulino believed he was swearing. This was directed at officers, patients, and anyone else in the room. He was also being disrespectful to others by purposely passing gas. He said something to the effect of “Okay I’m going to just keep farting.” PO Paulino did not recall § 87(2)(b) doing anything else with his body that was disrespectful.

When § 87(2)(b) asked to use the restroom, PO Paulino told him to wait, as he was already discharged and they could avoid any safety issue by having him use the restroom at the stationhouse. § 87(2)(b) was upset by this. § 87(2)(b) then became “belligerent” by stating he would pee on the floor. PO Paulino told him not to, and § 87(2)(b) became more agitated. PO Paulino told him he could use the urinal right next to the bed, but § 87(2)(b) said he would not use it and he would pee on the floor. Once the urinal was obtained, § 87(2)(b) said that he would help § 87(2)(b) pee by holding the urinal while he used it. § 87(2)(b) then got up from the bed into a standing position. So that he would not have his genitals exposed in front of other people, PO Paulino and § 87(2)(b) went towards the wall by the cabinet in order to be more discreet. For the usage of the urinal, § 87(2)(b) and PO Paulino were positioned as follows. § 87(2)(b)’s left hand remained handcuffed to the side railing of the bed with his right hand free to hold himself in the urinal. § 87(2)(b) was facing directly away from the bed, and the side of the bed closest to his back was the left side. § 87(2)(b) and PO Paulino were then standing in a “T” formation, the lines of the shape drawn by their shoulders. PO Paulino was the head or top stroke of the “T” and § 87(2)(b) was the body or foot of the shape, perpendicular to him. PO Paulino drew a diagram showing the positions

of himself, § 87(2)(b) and the bed. The square with the “x” represents the bed, with the line of § 87(2)(b) s shoulders parallel to it (labeled “him”) and PO Paulino’s shoulders (labeled “M”) perpendicular to § 87(2)(b) s shoulders and the side of the bed (Board Review 14). PO Paulino later stated he was on § 87(2)(b) s right side, not his left, as the head of the T. PO Paulino was holding the urinal with his right hand. His left hand was not doing anything. In the orientation described above, § 87(2)(b) used the urinal. At first, he used it without incident. Then he twisted his body to the right, in PO Paulino’s direction and urinated on PO Paulino’s leg and shoes. PO Paulino believed § 87(2)(b) turned intentionally to urinate on him, because prior to that he had been urinating without incident. PO Paulino reacted by dropping the urinal and pushing upward on § 87(2)(b) s stomach with his right palm in the air extending in front of his chest. He used only his right palm. He pushed and stepped away. He did not recall if he made contact with just his palm or his palm and fingers. He never made contact with § 87(2)(b) s stomach with a closed hand. He never punched § 87(2)(b). He did not recall if he made contact with § 87(2)(b) s lower ribcage; he was not sure where exactly touched besides the stomach area because it happened quickly. He pushed him to stop him from peeing on him. When PO Paulino pushed him, § 87(2)(b) s body moved back, towards and onto the bed. PO Paulino did not recall if he was complaining of pain, but speculated he probably was because later on he asked § 87(2)(b) if he wanted medical attention. After he cleaned himself of urine, a nurse approached PO Paulino and said something to the effect of “You’re not really liked, and I saw what you did.” PO Paulino thought this was referring to the incident with the urinal.

PO Tarricone’s testified that the prisoner was being belligerent and disrespectful by being loud and passing gas despite the presence of other people; PO Tarricone could see by their faces that other patients in the room were annoyed. The prisoner was not being belligerent with his body in any other way. PO Tarricone did not recall what he was saying when he was being loud. PO Tarricone stood in the room but did not recall where exactly he stood in relation to § 87(2)(b). PO Tarricone was able to see him. To use the urinal, § 87(2)(b) scooted to the foot of the bed and stood, while PO Paulino stood right next to him with the urinal in his hand. PO Tarricone was present in the room for § 87(2)(b) s use of the urinal but did not assist with the urinal. PO Tarricone was nearby, off to the side a couple feet away, and could see what was happening. When looking at PO Paulino and § 87(2)(b) PO Tarricone saw the officer’s back. While urinating, § 87(2)(b) turned to his right and urinated on PO Paulino. PO Tarricone did not recall exactly what PO Paulino said but thought it was to the effect of “stop” and “what are you doing?”. He pushed § 87(2)(b) backward. He pushed or shoved the prisoner with one hand, but PO Tarricone did not know which hand. PO Tarricone did not see what part of his hand PO Paulino used. He used an open hand. He only made contact with the prisoner once on his lower half. While he testified he was able to see PO Paulino’s hand while he pushed the prisoner back onto the bed, when asked multiple times to explain how he was able to view PO Paulino’s hand while looking at his back, PO Tarricone did not explain further. He only reiterated that he was in the room a couple feet away and reiterated that he was able to tell PO Paulino used an open palm. PO Paulino did not punch the prisoner. He did not punch him multiple times. PO Paulino did not use any additional force besides the push. PO Tarricone denied having a conversation with nurses about the urine on the floor and denied that any nurse accused PO Paulino of harming § 87(2)(b).

PO Musovic described § 87(2)(b) s behavior as follows: § 87(2)(b) was screaming, making a lot of noise, getting up, cursing, and said he did not want to be in the hospital, or under arrest, or to be with anyone. He questioned why he was at the hospital. PO Musovic thought his demeanor and body language were agitated. PO Musovic did not remember what he was saying specifically, but he was not being friendly. He cursed her out. § 87(2)(b) also said he would urinate on the floor or on the bed if they did not allow him to use the restroom. When PO Paulino helped § 87(2)(b) with the urinal, PO Musovic wanted to look away because she was a female and did not want to agitate

§ 87(2)(b) She turned her body away and headed toward the doorway to the hallway. She was more in the hallway than the room, but the space was tight, so she was only about five feet away from PO Paulino and § 87(2)(b) She could still hear what was going on, but she did not watch. While turned away, she heard § 87(2)(b) say roughly “I’m gonna pee” and she heard someone (she did not know who) say something to the effect of “don’t pee on me” or “stop peeing on me.” While she was turned towards the door, § 87(2)(b) “probably” made groans or sounds like he was in pain. She heard “some type of noise.” PO Musovic initially stated the “don’t pee on me” comment prompted her to turn around, then speculated that maybe the “some type of noise” made her turn around, and also stated she turned around when she knew the urinating was done. She did not remember if § 87(2)(b) said anything that indicated he was in pain before she turned back around from facing the hallway. When she did turn back, she noticed PO Paulino’s leg was wet from urine. The floor was also wet. She believed § 87(2)(b) was sitting on the bed and PO Paulino and PO Tarricone may have been standing by his legs. After she turned around, § 87(2)(b) said either “you hit me” or “you hurt me.” She did not know what he was referring to but thought based on what she observed that PO Paulino may have pushed him back to get him away. § 87(2)(b) was exhibiting pain by these words and by crouching over. His demeanor had not changed from how it was earlier; he was still upset. PO Musovic did not recall a conversation where nurses confronted officers about their treatment of the patient.

PO Morales was in the hallway making phone calls to his command for most of his time at the hospital. He did not believe he directly interacted with § 87(2)(b) He overheard that § 87(2)(b) needed to use the restroom but was not specifically involved in that conversation himself. PO Morales did not see § 87(2)(b) using the urinal. He was not aware of any urine spilling. The hospital bed where § 87(2)(b) was less than five paces from outside the door. While § 87(2)(b) used the urinal, there was a commotion in the room, but as PO Morales was in the hallway he did not know what the commotion entailed. A handful of people, either nurses or officers, ran or went into the room abruptly to address something happening inside the room. PO Morales did not know why they went inside and never learned what the commotion was about. PO Morales did not know what happened next. He never observed a puddle of urine. He did not observe PO Paulino with urine on his clothing. He did not see PO Paulino use any force against § 87(2)(b) He did not see him punch him in the stomach. § 87(2)(b) never complained to PO Morales of pain or of having been punched either at the hospital or at the stationhouse.

§ 87(2)(b), § 87(2)(g) While § 87(2)(b) stated § 87(2)(b) was not belligerent, she only observed him briefly and did not treat him or interact with him. § 87(2)(b) described § 87(2)(b) as intoxicated but not to the point of stumbling or slurring. § 87(2)(b) who directly treated § 87(2)(b) was not asked about his demeanor or condition in her IAB interview. § 87(2)(b), § 87(2)(g) While § 87(2)(b) understood through what she heard and observed around the curtain that urine “spilled,” she did not witness the entire incident with an unobstructed view and conceded she was also busy with other patients. Absent § 87(2)(b)’s testimony, the investigation credits the officers’ consistent statements that § 87(2)(b) turned towards PO Paulino and urinated on him, apparently intentionally.

§ 87(2)(b), § 87(2)(g) § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Per Patrol Guide Procedure 221-01 members of service will use only the reasonable force necessary to gain control or custody of a subject. Factors members of service should consider include the nature and severity of the crime and circumstances, the actions taken by the subject, immediacy of the perceived threat or harm to the subject or others, whether the subject is actively resisting custody, and the number of subjects in comparison to the number of members of service. When appropriate and consistent with personal safety, members of the service will use de-escalation techniques to safely gain voluntary compliance from a subject to reduce or eliminate the necessity to use force. Further, members of service shall not use any level of force on handcuffed or otherwise restrained subjects unless necessary to prevent injury, escape or to overcome active physical resistance or assault (Board Review 09).

It is undisputed that § 87(2)(b) was handcuffed to the bed. § 87(2)(b), § 87(2)(g)

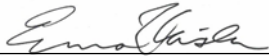
Civilian and Officer CCRB Histories

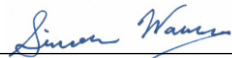
- § 87(2)(b) has been party to one prior CCRB complaints and was also a witness in that case (Board Review 12):
 - § 87(2)(b)
- § 87(2)(b) has been party to four CCRB complaints and has been named as a victim in two prior allegations (Board Review 13):
 - § 87(2)(b)
- PO Paulino has been a member of service for five and has been a subject in three prior CCRB complaints and nine allegations, none of which were substantiated, although 202001061 remains under investigation. § 87(2)(g)

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- A Notice of Claim request was sent to the NYC Office of the Comptroller on November 8, 2021. The results will be included in the case file upon receipt.
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (Board Review 10).
- According to the Office of Court Administration (OCA), in the past ten years, § 87(2)(b) was convicted of multiple counts of disorderly conduct, § 87(2)(b), assault in the third degree, harassment in the second degree, § 87(2)(b) (Board Review 11).

Squad: 15

Investigator:		Inv. Emma Kaisla	11/9/21
	Signature	Print Title & Name	Date

Squad Leader:		IM Simon Wang	11/12/21
	Signature	Print Title & Name	Date

Reviewer:			
	Signature	Print Title & Name	Date